

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
TENNESSEE BUSINESS ENTERPRISES**

**CHAPTER 1240-6-12  
PRIORITY FOR THE ESTABLISHMENT OF VENDING FACILITIES**

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**1240-6-12-.01 PRIORITY FOR THE ESTABLISHMENT OF VENDING FACILITIES ON PUBLIC PROPERTIES IN TENNESSEE.**

(1) Priority For The Establishment Of Vending Facilities On Public Property.

(a) Priority.

1. "Priority" means the right of the Department of Human Services, through its Division of Services for the Blind, to establish on any public property a vending facility to be operated by a blind individual.
2. This priority further means that when the Department has surveyed an existing property previously, or has surveyed a new property on which vending facilities are proposed, or prior contracts for existing facilities on public property for vending services are expiring, have expired, or are to be changed in any way and has determined that such property is suitable for the location of a vending facility. It shall have the right of first refusal for the operation of any vending facilities on the public property and the exclusive right to the operation of any and all vending facilities on any public property, which it determines are capable of being operated by a blind individual, which it licenses or by an individual who may be operating the facility, as a temporary manager, until a licensed blind individual can assume the operation of the vending facility.
3. Except as provided in *TCA §§71-4-502(4), 71-4-504, 71-4-505, and 71-4-506*, the priority shall apply to all existing, altered or new buildings, facilities, or grounds. This priority shall be exercised exclusively by the Department in its sole discretion on behalf of legally blind individuals, who are certified and licensed as vending facility managers by the department and who are certified by the department to provide the type of service required by the management of the public property.

(b) Public Property.

1. "Public property" means all property owned or leased by the State of Tennessee, any county, municipality, or any other entity which is created by act of the general assembly to perform any public function.
2. Specific exclusions from "public property".
  - (i) Primary and secondary schools and entities created under Title 42 and their operations are specifically excluded from this definition.
  - (ii) Institutions that are governed by the University of Tennessee System or the State University and Community College System and their operations are also specifically excluded from this definition, except that the vending facilities

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presently in operation at such institutions on April 29, 1996 shall continue to operate at their present locations or, if necessary, at a location comparable in terms of potential patronage with the priority established by this part. Moreover, the existing priority shall extend to any new structures on any of the campuses governed by the University of Tennessee or the State University and Community College System and the priority shall also extend to the establishment of at least one (1) vending facility on any new campus which is developed either by the University of Tennessee System or the State University and Community College System.

- (c) This priority, when exercised by the agency, is unconditional except in those cases involving cafeteria service.
- (d) Cafeterias.
  - 1. As provided in *TCA §71-4-505*, in the circumstances involving cafeteria services, the agency must be notified as required in paragraph (3) below, and shall be afforded an opportunity to submit a proposal for the operation of the proposed cafeteria. If the agency's proposal, when considered with all other proposals, is found to be competitive in terms of quality of service, pricing of merchandise and the rate of commission and/or rental to be paid, then a priority shall be granted to the agency.
  - 2. The agency's proposal will not be considered competitive, if its proposed payment of annual commissions and/or rental fees is not within two (2%) of that submitted by another organization which would otherwise be awarded the cafeteria operation. Nothing herein shall be construed to allow the public property management to take any action regarding an existing facility to defeat an already existing priority.
- (2) If the results of the survey substantiate that the establishment of a vending facility is feasible and the agency exercises the priority, public property management shall take all necessary steps to ensure that the establishment of the vending facility occurs, and that space for the vending facilities and all utilities required for the operation of the facility, except telephone service, are provided at no cost to the vendor or the agency. The agency shall provide all necessary alterations (including plumbing and electrical services), the necessary equipment and merchandise, a licensed or temporary manager, and the appropriate supervision of the manager.
- (3) In the event that existing buildings or facilities of any kind are acquired, or new buildings or facilities are constructed by any of the entities referred to above, notice shall be given by the public property management to the agency by registered mail, return receipt requested, one hundred fifty (150) days prior to the date of anticipated occupancy or sixty (60) days prior to the date of any scheduled renovations for existing structures or other facilities, or the date construction is to begin for new buildings or other facilities, so that the agency may have an opportunity to review space allocation and make recommendations regarding utility needs and the placement of electrical outlets, drains, and water lines for the vending facility.
- (4) Occupancy Permits And Contracts For Operations On Public Property.
  - (a) All vending facility operations, except those relating to cafeteria service, shall be governed by an agreement between the agency and property management known as an occupancy permit, or by a contract with the public property management which, among other things, shall include the location, type of facility, space available, all necessary equipment and the operating hours of the facility.
  - (b) In the event of a cafeteria service, a contract between the agency and property management will be executed which may impose certain requirements upon the vendor regarding the operation as well as costs for which the vendor shall be responsible (including payment of commissions and/or

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rental).

- (c) In the negotiation process between the agency and property management regarding either the terms or conditions of an occupancy permit or a contract, the area representative(s) of the Committee shall have an opportunity to participate with the agency, to assist and advise the agency in the determination of those terms and conditions provided. However, the agency shall be ultimately responsible for the negotiation of the permit or contract.
- (5) In the event that any dispute arises between the agency and property management regarding the granting of the priority, the establishment or the continued operation of the facility (either party) may file a Complaint with the Secretary of State for Tennessee in order to have the matter resolved, in accordance with the statutory provisions of *TCA §71-4-501 et seq.*
- (6) Nothing in this section or the rules of the Tennessee Business Enterprises shall supersede any cooperative agreements which are in effect between the agency and public property management on July 1, 1994 regarding the current operation of vending facilities on public property, nor shall anything in this section or the rules of the Tennessee Business Enterprises preclude the agency from entering into future agreements which may be less restrictive than the provisions of the rules if, in the agency's judgment, such agreements are in the best interest of the program.

**Authority:** *TCA §§4-5-201 et seq., 14-628, 14-14-404(c), 71-1-105(12), 71-4-501 et seq., 71-4-603, 71-4-604; 34 CFR 395.12. Administrative History:* Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed December 11, 1986; effective January 25, 1987. (Formerly number 1240-6-11-.02). Repeal and new rule filed April 27, 1998; effective August 28, 1998.

#### **1240-6-12-.02 PRIORITY FOR THE ESTABLISHMENT OF VENDING FACILITIES ON FEDERAL PROPERTIES.**

- (1) Priority For Vending Facilities On Federal Property.
  - (a) Pursuant to 20 USC 107 et seq. and CFR Part 395.30, federal property management of each federal agency must assure that adequate space is available and utilities are provided to accommodate the establishment of one or more vending facilities. The priority, with the exception of cafeterias, is unconditional.
  - (b) In those cases involving cafeteria service, federal property management has the prerogative to enter into direct negotiations with the agency for the service to be provided, but the agency must submit a proposal for review and consideration, or property management may request bids to be provided from a number of sources. In such an event, the agency will be given priority if its bid is deemed to be within the competitive range when considered with all other bids.
- (2) Occupancy Permits And Contracts For Operations On Federal Properties.
  - (a) All vending facility operations, except those relating to cafeteria service, shall be governed by an agreement between the agency and property management, known as an occupancy permit which, among other things, shall include the location, type of facility, space available, all necessary equipment, and the operating hours of the facility.
  - (b) In the event of a cafeteria service, a contract between the agency and property management will be executed which may impose certain requirements upon the vendor regarding the operation as well as costs for which the vendor shall be responsible. In the negotiation process between the agency and property management regarding either the terms or conditions of an occupancy permit or a contract, the area representative(s) of the Committee shall have an opportunity, to participate with the agency to assist and advise the agency in the determination of those terms and conditions provided. However, the agency shall be ultimately responsible for the negotiation of the permit

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or contract.

- (3) In the event that a dispute arises between the agency and property management regarding the granting of the priority, the establishment or continued operation of a vending facility, the agency may file a petition with the Secretary of Education to convene an arbitration panel to resolve the dispute under the provisions of 34 CFR Part 395.37.

**Authority:** TCA §§4-5-201 *et seq.*, 14-14-404(c), 71-1-105(12), 71-4-604(c); 34 CFR §§395.12 and 395.37.

**Administrative History:** Original rule filed May 25, 1983; effective June 24, 1983. Amendment filed December 11, 1986; effective January 25, 1987. (Formerly number 1240-6-11-.02). Amendment filed March 10, 1989; effective April 24, 1989. Repeal and new rule filed April 27, 1998; effective August 28, 1998.